

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 The United States of America,
5 Plaintiff
6 v.
7 Daniel J. Dease,
8 Defendant
9

2:15-cr-00255-JAD-PAL
Order Denying Motion for Judicial
Recommendation to the Federal
Bureau of Prisons
[ECF No. 119]

10 Three months ago, I sentenced Daniel Dease to 30 months in custody after he pled guilty
11 under a plea agreement to one count of conspiracy to distribute a controlled substance in violation of
12 21 U.S.C. §§ 841 and 846.¹ Dease—who still has counsel—moves pro se and ex parte for a judicial
13 recommendation to the BOP that he receive three months of pre-release half-way house
14 confinement.² Because Dease has not demonstrated that he is entitled to this relief, particularly on an
15 ex parte basis, I deny the motion without prejudice to his ability to file a new motion with notice on
16 the government and with a discussion of how the factors under 18 U.S.C. § 3621(b) justify this relief.

17 **Discussion**

18 Title 18 Section 3621(b) of the United States Code provides that the BOP has discretion to
19 place an inmate into “any available penal or correctional facility,” including an RRC placement,³ and
20 to “direct the transfer of an inmate from one penal correctional facility to another” “at any time.”⁴ In
21 determining which facility to place the inmate in, the BOP must consider:

22 (1) the resources of the facility contemplated; (2) the nature and
23 circumstances of the offense; (3) the history and characteristics of the
24 prisoner; (4) any statement by the court that imposed the

25 ¹ ECF Nos. 92 (plea agreement), 113 (judgment).

26 ² ECF No. 119.

27 ³ *Rodriguez v. Smith*, 541 F.3d 1180, 1187 (9th Cir. 2008).

28 ⁴ 18 U.S.C. § 3621(b).

1 sentence—(A) concerning the purposes for which the sentence to
2 imprisonment was determined to be warranted; or (B) recommending a
3 type of penal or correctional facility as appropriate; and (5) any
pertinent policy statement issued by the Sentencing Commission
pursuant to section 994(A)(2) or title 28.⁵

4 Section 3624(c), on the other hand, deals exclusively with the placement of a prisoner during
5 the final portion of his sentence. It provides:

6 The Director of the [BOP] [must], to the extent practicable, ensure that
7 a prisoner serving a term of imprisonment spends a portion of the final
8 months of that term (not to exceed 12 months), under conditions that
9 will afford that prisoner a reasonable opportunity to adjust and to
prepare for the reentry of that prisoner into the community. Such
conditions may include a community correctional facility.⁶

10 In administering § 3624(c), courts consider the statutory factors outlined in 18 U.S.C. § 3621(b).⁷

11 Federal Rule of Criminal Procedure 36, which Dease relies on, allows a court to “correct a
12 clerical error in a judgment, order, or other part of the record, or correct an error in the record arising
13 from oversight or omission” at any time. But I do not find that Rule 36 is a proper basis for making
14 the change that Dease requests. This change would be substantive, not merely clerical.

15 Nonetheless, I may recommend placement in an RRC without correcting the judgment.⁸ But
16 Dease has not demonstrated that a judicial recommendation is necessary here. And by submitting
17 this motion on an ex parte basis,⁹ he did not afford the government any opportunity to respond.

21 ⁵ *Id.*

22 ⁶ 18 U.S.C. § 3624(c)(1).

23 ⁷ *Rodriguez*, 541 F.3d at 1184–85.

24 ⁸ See e.g. *United States v. Palacios*, 2007 WL 2410389, *3 (S.D. Cal. July 14, 2007) (declining to
25 amend judgment under Federal Rule of Criminal Procedure 36 and instead issuing order
26 recommending placement in an RRC for final six months of incarceration). I recognize, however,
27 that though the BOP must consider my recommendation, it has no obligation to follow or adopt it.

28 ⁹ Local Criminal Rule 47-1 requires all motions to “be in writing and served on all other parties who
have appeared.”

1 **Conclusion**

2 Accordingly, IT IS HEREBY ORDERED that **Dease's ex parte motion to amend criminal**
3 **judgment pursuant to Fed. R. Crim. P. 36 [ECF No. 119] is DENIED** without prejudice to
4 Dease's ability to file a new motion—through counsel¹⁰—and serve that motion on the government
5 in compliance with Local Criminal Rule 47-1.

6 Dated April 24, 2017

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9 Jennifer A. Dorsey
10 United States District Judge
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26 ¹⁰ The fact that Dease remains represented by appointed counsel provides a secondary reason to deny
27 this motion. Local Rule IA 11-6(a) states that “A party who has appeared by attorney cannot while
28 so represented appear or act in the case. This means that once an attorney makes an appearance on
behalf of a party, that party may not personally file a document with the court; all filings must
thereafter be made by the attorney.”